

Public Version

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DEBORAH R. COOKE and CHRISTINA
M. RODINO,

11 Civ. 0201 (AKH) (RLE)

Plaintiffs,

-against-

DB 85 GYM CORP. d/b/a DAVID BARTON GYM,
CV II GYM, LLC d/b/a DAVID BARTON GYM,
CV VI, LLC d/b/a DAVID BARTON GYM, DB
BROADWAY GYM CORP. d/b/a DAVID
BARTON GYM, KEVIN KAVANAUGH, and
CARL HELMLE, III,

Declaration of Corey Stark

Defendants.

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COREY STARK, declares under penalty of perjury that the following statements are true:

1. I am a member of The Dweck Law Firm, LLP, attorneys for Plaintiffs in the above-captioned matter. As such, I have knowledge of the facts stated herein. I submit this declaration in support of Plaintiffs' motion to enforce the settlement agreement and for sanctions against Defendants.

2. On August 31, 2012, the parties attended a mediation session through the Southern District of New York's Alternative Dispute Resolution Program (the "Mediation Session"). During the Mediation Session, the parties reached an agreement to settle this matter.

3. On September 5, 2012, the attorneys for the respective parties advised the Hon. Alvin K. Hellerstein that the parties had reached an agreement to settle this matter

and were working to finalize the written settlement agreement. Annexed hereto as Exhibit “1” is a true and correct copy of the September 5, 2012 letter.

4. Thereafter, the parties completed negotiating the terms and finalized the written settlement agreement (the “Settlement Agreement”).¹

5. Pursuant to Section 1(a) of the Agreement, Defendants’ deadline to deliver the settlement proceeds expires 17 days after Plaintiffs execute the Agreement.

6. On September 24, 2012, Plaintiffs executed the Agreement. Annexed hereto as Exhibit “2” is a true and correct copy of the Settlement Agreement.²

7. On September 24, 2012, I delivered the Settlement Agreement to Defendants’ attorneys by Federal Express. Annexed hereto as Exhibit “3” is a true and correct copy of the September 24, 2012 cover letter, which accompanied the executed Settlement Agreement.

8. Seventeen days have elapsed since Plaintiffs executed the Settlement Agreement, yet Defendants have failed to deliver the settlement proceeds and have not sought or obtained an extension.

9. In an effort to avoid motion practice, I contacted Defendants’ attorney Michael J. Vollbrecht no less than 20 times to request that Defendants comply with the terms of the Agreement by delivering the settlement proceeds. In response, Mr. Vollbrecht has advised me that Defendants’ insurance carrier has submitted the settlement proceeds to Defendants, and they are currently under the control of Defendant Kevin Kavanaugh. Mr. Vollbrecht also advised me that Mr. Kavanaugh is aware that the deadline to deliver the settlement proceeds to Plaintiffs expired nearly two weeks ago.

¹ It should be noted that Defendants’ attorneys wrote the settlement agreement.

² The Settlement Agreement is not attached to the *Public Version* filed by ECF because it is strictly confidential.

